

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 25 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHKUMAR ISHWARLAL DARJI

Versus

STATE OF GUJARAT

Appearance:

MR NAREN M DAVE for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), by virtue of an order passed by District Magistrate, Banaskantha, at Palanpur, on August 28, 1999, in exercise of powers of

under Section 3(1) of the PASA Act.

2. The petitioner sent an application, through jail, addressed to the Honourable the Chief Justice of this Court. The letter received was treated as a petition and numbered as such.

3. Since the petitioner had approached this Court through jail and was not represented by an advocate, learned advocate, Mr. N.M. Dave came to be appointed by way of legal aid. He, however, was not present when the matter was called out twice during the day.

4. Heard learned Assistant Government Pleader, Mr. K.T. Dave, for the respondent authorities. He has provided a set of papers relating to the detention.

5. It transpires from the grounds of detention that the detaining authority took into consideration five Prohibition cases registered against the detenu, which are pending trial. The detaining authority came to conclusion that the detenu is a bootlegger, his activities are detrimental to public order and is required to be detained under the PASA Act as institution of Chapter Case has not paid results and that proceedings under Section 56 and 57 of Bombay Police Act will not deter the detenu from continuing his activities from neighbouring districts and, therefore, detention under PASA Act is the only remedy that can be resorted to in order to prevent the detenu from continuing his anti-social activities.

6. It also transpires from the grounds of detention that the detaining authority took into consideration resorting to externment proceedings under Section 57 of the Bombay Police Act, besides considering other less drastic remedies. If the offences relied upon by the detaining authority are considered, they are all under Bombay Prohibition Act and are pending trial. The requirement of Section 57 of the Bombay Police Act is that, there must be three convictions within a period of three years under Bombay Prohibition Act for applicability of Section 57(c) or two convictions under Section 65 or 68 of the said Act within a period of three years for applicability of Section 57(b)(ii) or two convictions under Bombay Beggars Act, 1945 or under the Bombay Prevention of Prostitution Act, 1923 or the Saurashtra Prevention of Prostitution Act, 1952 or the Hyderabad Suppression of Immoral Traffic Act, 1952 or the Madhya Pradesh Suppression of Immoral Traffic Act, 1953 or the Suppression of Immoral Traffic in women and Girls

Act, 1956 for applicability of Section 57(b) or conviction under Chapter XII, XVI or XVII of the Indian Penal Code for applicability of Section 57(a) of the Bombay Police Act. Thus, in the facts of the present case, provisions of Section 57(a), (b) or (c) were not relevant material, which have been considered by the detaining authority. The order of detention, therefore, stands vitiated for consideration of irrelevant factor. The petition, therefore, deserves to be allowed on this ground alone.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 28, 1999 is, hereby, quashed. The detenu-Jagishkumar Ishwarlal Darji is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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